

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KIMBERLY C. CUTONE and]
ANTHONY CUTONE,]
[
Plaintiffs,]
[
v.]
[
ELI LILLY AND COMPANY, et al.,]
[
Defendants.]
[

**JOINT MOTION TO CANCEL STATUS CONFERENCE
AND RETURN CASE TO MEDIATION**

COME NOW the parties, by and through counsel, and hereby move the Court to enter an Order canceling the Status Conference scheduled for Tuesday, November 7, 2006 and returning this matter to mediation, and as grounds therefor states:

1. This is a products liability/personal injury case arising from plaintiff Kimberly Cutone's in utero exposure to diethylstilbestrol ("DES").
2. On October 17, 2006, the parties filed a Joint Motion to Continue the Mediation that had been scheduled for October 18, 2006 before Magistrate Judge Marianne B. Bowler [Docket No. 89], due to plaintiff Kimberly Cutone's recent pregnancy and the uncertainties surrounding the potential outcome of said pregnancy. Magistrate Bowler granted said Joint Motion and re-scheduled the Mediation for March 15, 2006.
3. On October 18, 2006, the parties filed a Joint Motion to Stay this Case for a period of six (6) months [Docket No. 90] for the aforementioned reasons. Said Joint Motion was denied by this Court on October 23, 2006 [Docket No. 91], and a Status Conference was scheduled for November 7, 2006 at 11:00 a.m.

4. Ms. Cutone has recently advised counsel that she has lost her recent pregnancy, thereby mooting any need for a six (6) month continuation of Mediation.

5. The parties believe that the interests of justice and economy would best be served by canceling the Status Conference scheduled for November 7, 2006, and returning this case to Mediation to be scheduled at Magistrate Judge Bowler's earliest convenient date. Both parties are available for mediation on November 13, 15 and 20, 2006; December 11, 2006; and the end of January, 2007.

WHEREFORE, the parties respectfully request the Court enter an Order canceling the November 7, 2006 Status Conference and returning this case to Mediation.

Respectfully submitted,

TODD & WELD LLP

FOLEY HOAG LLP

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Dated: October 31, 2006

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Attorneys for Eli Lilly and Company

LOCAL RULE 7.1(A)(2) CONFERRAL CERTIFICATION

I have been informed that counsel for plaintiff and defendant conferred up to and including October 31, 2006, and have attempted in good faith to resolve or narrow the issues.

/s/ Erica Tennyson
Erica Tennyson

CERTIFICATE OF SERVICE

I, Erica Tennyson, hereby certify that this Joint Motion to Cancel Status Conference and Return Case to Mediation filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 31, 2006.

/s/ Erica Tennyson
Erica Tennyson

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Civil Action No.: 1:04-cv-12725-JLT/MBB
Next Event: Status Conference on 11/7/06

[PROPOSED] ORDER

UPON CONSIDERATION of the Joint Motion to Cancel Status Conference and Return Case to Mediation, and for good cause shown, it is this _____ day of _____, 2006,

ORDERED that the Motion be and hereby is GRANTED;

AND IT IS FURTHER ORDERED that the Status Conference scheduled for Tuesday, November 7, 2006 at 11:00 a.m. is hereby canceled;

AND IT IS FURTHER ORDERED that this case be returned to Mediation to be scheduled on November 13, 15 or 20, 2006, December 11, 2006, or the end of January 2007, or at Magistrate Judge Marianne B. Bowler's earliest convenient date.

JOSEPH L. TAURO
United States District Judge

TODD & WELD LLP

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I, Erica Tennyson, hereby certify that this Proposed Order on Joint Motion to Cancel Status Conference and Return Case to Mediation filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 31, 2006.

/s/ Erica Tennyson

Erica Tennyson